

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY LLC, and GENERAL  
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

**DECLARATION OF KIRK DAILEY IN  
SUPPORT OF DEFENDANTS'  
OPPOSITION TO MICROSOFT'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT OF BREACH OF  
CONTRACT AND SUMMARY  
JUDGMENT ON MOTOROLA'S THIRD,  
FOURTH, FIFTH, SEVENTH, EIGHTH,  
AND NINTH AFFIRMATIVE DEFENSES  
AND SECOND COUNTERCLAIM**

I, Kirk Dailey, declare as follows:

1. I am currently an employee of Google Inc. My title is Head of Patent Transactions. I have been employed by Google since September 2012. Prior to that time, I was employed by Motorola Mobility, LLC. There, I was the Corporate Vice President of Intellectual Property. Although my title changed over the years, I ran Motorola's intellectual property business since October 2006. I have personal knowledge of the facts stated herein and if called to testify could and would competently testify thereto.

1           2.       In my role at Motorola, and now Google, I have negotiated and been responsible  
2 for dozens of licenses covering standard essential patents. Patent license negotiations are complex  
3 and often take months, or even years, to complete.

4           3.       I was personally involved in Motorola's negotiations with Microsoft prior to the  
5 filing of the present lawsuit. In early October 2010, Microsoft filed suit against Motorola in the  
6 ITC and Washington District Court, alleging that Motorola's Android smartphones infringed  
7 Microsoft's ActiveSync patents, as well as other patents. The parties had previously been  
8 negotiating renewing Motorola's license to the ActiveSync patents. In the course of those  
9 negotiations, I told Microsoft that Motorola believed that it had patents which read on Microsoft's  
10 products and suggested that the parties discuss a patent cross-license agreement.

11          4.       After Microsoft filed its lawsuits in 2010, Horacio Gutierrez of Microsoft and I  
12 had a conversation. We discussed maintaining an in-person meeting scheduled for later in the  
13 month. Based on his statements and my experience in patent licensing negotiations, I understood  
14 that Microsoft was inviting Motorola to identify the patents that Motorola believed read on  
15 Microsoft's products so that the parties could then negotiate a cross-license.

16          5.       In response to Microsoft's request, on October 21, 2010 and October 29, 2010,  
17 Motorola sent Microsoft two letters offering to license Motorola's 802.11 and H.264 SEP  
18 portfolios, respectively, and identifying lists of patents worldwide. I sent these two letters on  
19 Motorola's behalf. Given the already pending litigation that Microsoft had filed, I and Motorola  
20 were under significant time pressure quickly to respond to Microsoft's request and to identify  
21 patents to Microsoft for discussion. My intent in sending these two letters was to begin the  
22 process of negotiating a patent cross-license agreement.

23          6.       I chose 2.25% as the proposed royalty rate because that royalty rate is Motorola's  
24 historical opening offer for its standard essential patent portfolios. It is an opening offer used in  
25 many previous bilateral negotiations with other companies. It was not a number unique to  
26 Microsoft. When I sent the letters I envisioned a discussion about Motorola's patents as well as  
27 Microsoft's patents, and from there could have been a range of outcomes had negotiations  
28 proceeded.

7. Motorola's royalty rates like those of other companies had historically been applied to the price of end products. Using end product prices is convenient to track units and sales.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

EXECUTED this 12th day of July, 2013 at Chicago, IL

Kirk Dailey

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 12th day of July, 2013.

/s/ Marcia A. Ripley  
Marcia A. Ripley